

HOUSE No. 1861

By Representatives Walsh of Boston and Richardson of Framingham, petition of Martin J. Walsh and others relative to workers' compensation. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Pam Richardson	Barbara A. L'Italien
Martin J. Walsh	John P. Fresolo
Angelo J. Puppolo, Jr.	Michael F. Rush
Robert J. Haynes	William Lantigua
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Christine E. Canavan	Brian P. Wallace
Steven J. D'Amico	Christopher N. Speranzo
Kathi-Anne Reinstein	

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO WORKERS' COMPENSATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (7A) of Chapter 152 of the General
2 Laws, as now appearing, is hereby amended by adding the following
3 sentence after the fourth sentence as so appearing:—

4 An administrative Judge shall take into consideration the employ-
5 ee's pre-injury employment in determining whether the injury
6 remains a major but not necessarily predominant cause of disability
7 and need for treatment.

1 SECTION 2. Section 13 of M.G.L. c. 152 shall be amended as
2 follows: to the last sentence of the first paragraph of subsection (1),
3 delete “.” and add “provided, any rate set by the rate setting commis-
4 sion shall not be less than 80% of the usual and customary fee for
5 any such health care service.”

1 SECTION 3. Section 14, Subsection 1 of Chapter 152, as cur-
2 rently appearing is amended by adding the following language after
3 the word “proceedings” currently appearing therein:— “including an
4 employee’s claim for medical benefits pursuant to sections 13 & 30
5 of this chapter.”

1 SECTION 4. Section 30 of M.G.L. c. 152 shall be further
2 amended as follows: following the last sentence in the first para-
3 graph, add “In any case in which the provision of health care serv-
4 ices is an issue and it is reasonably expected that a delay or denial
5 may result in harm to the employee, the employee may request an
6 emergency conference before an Administrative Judge concerning
7 the sole issue of the provision of health care services. Such request
8 may be made following a referral to dispute resolution and upon
9 information, including a medical record indicating that the health
10 care services sought are reasonable, necessary and related to the
11 industrial injury or illness at issue.”

1 SECTION 5. Section 30 of M.G.L. c. 152 shall be amended as
2 follows: delete the first sentence of the second paragraph and add
3 “From time to time, the commissioner shall promulgate regulations
4 regarding the provision of adequate and reasonable health care serv-
5 ices; provided such regulations shall identify no more than five treat-
6 ment guidelines representing five of the most common industrial
7 injuries or illnesses for which utilization review shall be required.”
8 Following the last sentence of the second paragraph, add “Otherwise
9 the determination of whether any provision of health care services is
10 reasonable or adequate shall be made by the Administrative Judge
11 pursuant to sections 10A, 11 and 11 A of the Act.”

1 SECTION 6. Section 30, of Chapter 152, as now appearing by
2 inserting at the end thereof the following paragraph:—
3 Any insurer who provides utilization review programs or con-
4 tracts with agents to provide utilization review programs shall
5 comply with any regulations promulgated regarding utilization
6 review programs, including the time limitations set forth therein.
7 Failure to comply with said regulations shall result in a determina-
8 tion that the requested health care services shall be deemed
9 approved.

1 SECTION 7. Chapter 152, Section 34, of the General Laws, as
2 now appearing, is hereby amended by striking out the first sentence
3 of Section 34 as so appearing, and inserting in place thereof, the
4 following sentence:

5 Section 34. While the incapacity for work resulting from the
6 injury is total, during each week of incapacity, the insurer shall pay
7 the injured employee a weekly compensation equal to two-thirds of
8 his average weekly wage before the injury, but not more than the
9 maximum weekly compensation rate, unless the average weekly
10 wage of the employee is less than the minimum weekly compensa-
11 tion rate, in which case said weekly compensation shall be equal to
12 his average weekly wage.

1 SECTION 8. Chapter 152 of the General Laws, as now appearing
2 is hereby amended by striking out Section 35 and inserting in place
3 thereof the following section:—

4 Section 35. While the incapacity for work resulting from the
5 injury is partial, during each week of incapacity the insurer shall pay
6 the injured employee a weekly compensation equal to sixty percent
7 of the difference between his or her average weekly wage before the
8 injury and the weekly wage he or she is capable of earning after the
9 injury. An insurer may reduce the amount paid to an employee under
10 this section to the amount at which the employee's combined weekly
11 earnings and benefits are equal to two times the average weekly
12 wage in the commonwealth at the time of such reduction.

13 The total number of weeks of compensation due the employee
14 under this section shall not exceed two hundred sixty; provided,
15 however, that this number may be extended to five hundred twenty if
16 an insurer agrees or an administrative judge finds that the employee
17 has, as a result of a personal injury under this chapter, suffered a per-
18 manent loss of seventy-five percent or more of any bodily function
19 or sense specified in paragraph (a), (b), (e), (f), (g), or (h) of subsec-
20 tion (1) of section thirty-six, developed a permanently life-threat-
21 ening physical condition, or contracted a permanently disabling
22 occupational disease which is of a physical nature and cause, or has
23 returned to employment pursuant to an Individual Written Rehabili-
24 tation Plan pursuant to Section 30(H); or has been found unsuitable
25 for vocational rehabilitation by the Office of Education and Voca-
26 tional Rehabilitation; or has returned to employment at less than his

27 preinjury average weekly wage; or has been found by an administra-
28 tive judge to have a permanent partial incapacity. Where applicable,
29 losses under this section shall be determined in accordance with
30 standards set forth in the American Medical Association Guides to
31 the Evaluation of Permanent Impairments. Where the insurer agrees
32 or the administrative judge finds such permanent partial disability as
33 is described in this paragraph, the total number of weeks the
34 employee may receive benefits under this section shall not exceed
35 five hundred twenty. Where there has been no such agreement or
36 finding the number of weeks the employee may receive benefits
37 under these sections shall not exceed three hundred sixty four.

1 SECTION 9. Section 36 of Chapter 152 of the General Laws, as
2 now appearing, is hereby amended by striking out subsection (k) and
3 substituting in its place the following paragraph:—

4 Subsection (k). For bodily disfigurement, an amount which,
5 according to the determination of the member or reviewing board, is
6 a proper and equitable compensation, not to exceed fifteen thousand
7 dollars; which sum shall be payable in addition to all other sums due
8 under this section.

1 SECTION 10. Section 46A of Chapter 152 as currently appearing
2 is amended by adding the following paragraph:—

3 Notwithstanding any general or special law to the contrary, in a
4 case of person who has filed a claim for injury under the provisions
5 of chapter 152 of the General Laws and such claim is disputed and
6 not accepted by the workers' compensation insurer and such person
7 has coverage under a policy of accident and sickness insurance, the
8 health insurer shall provide reasonable and necessary medical bene-
9 fits for such person until and unless an administrative judge of the
10 division of industrial accidents issues an order directing the workers'
11 compensation insurer to provide medical benefits pursuant to said
12 chapter 152.